

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION, STATE OF NEW	:	
YORK, STATE OF CALIFORNIA, STATE OF	:	
OHIO, COMMONWEALTH OF PENNSYLVANIA,	:	20cv706 (DLC)
STATE OF ILLINOIS, STATE OF NORTH	:	
CAROLINA, and COMMONWEALTH OF	:	<u>ORDER</u>
VIRGINIA,	:	
	:	
Plaintiffs,	:	
	:	
-v-	:	
	:	
VYERA PHARMACEUTICALS, LLC, AND	:	
PHOENIXUS AG, MARTIN SHKRELI,	:	
individually, as an owner and former	:	
director of Phoenixus AG and a former	:	
executive of Vyera Pharmaceuticals,	:	
LLC, and KEVIN MULLEADY, individually,	:	
as an owner and former director of	:	
Phoenixus AG and a former executive of	:	
Vyera Pharmaceuticals, LLC,	:	
	:	
Defendants.	:	
	:	
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DENISE COTE, District Judge:

After extended negotiations over their right to obtain and review certain documents, namely monitored and recorded communications of Martin Shkreli that the Federal Trade Commission ("FTC") obtained from the federal Bureau of Prisons ("BOP"), the plaintiffs filed a letter on August 12, 2020, requesting that the Court issue a ruling that the attorney-client privilege does not apply to the documents at issue. On August 17, Shkreli opposed the plaintiffs' August 12 letter,

arguing that the FTC's collection of Shkreli's communications from the BOP violated the Privacy Act, 5 U.S.C. § 552(a), and requested that the Court postpone ruling on the issue of attorney-client privilege until the Court determined whether the collection of these documents violated the Privacy Act.¹ On August 19, the plaintiffs filed a reply letter. The deadline for substantial completion of document discovery is August 28.

Having reviewed the parties' submissions, and considering the lengthy delay incurred by the plaintiffs in their review of these documents, it is hereby

ORDERED that by Tuesday, **August 25, 2020 at 10:00 a.m.**, Shkreli shall provide to the plaintiffs the name of any attorney for Shkreli, as well as the name of that attorney's law firm.

IT IS FURTHER ORDERED that the plaintiffs shall make reasonable efforts to screen from review communications between Shkreli and the identified attorneys.

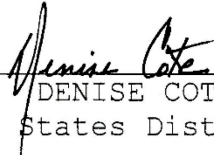
IT IS FURTHER ORDERED that the plaintiffs may proceed to review the remainder of the documents produced by the BOP. See United States v. Meija, 655 F.3d 126, 133 (2d Cir. 2011).

¹ In wholly conclusory terms, Shkreli also argued that the FTC's collection of Shkreli's communications following the filing of this lawsuit on January 27, 2020, violates Rules 26 and 45, Fed. R. Civ. P. As Shkreli failed to explain the basis for this argument, it is rejected.

IT IS FURTHER ORDERED that Shkreli's argument that the Privacy Act, 5 U.S.C. § 552a, precludes the FTC's access to these documents is rejected. Should Shkreli conclude that he has a claim for violation of the Privacy Act, his recourse is to file a separate lawsuit against the BOP. See United States v. Cooper, No. 05cr0549 (VRW), 2005 WL 3555713, at *4 (N.D. Cal. Dec. 28, 2005).

IT IS FURTHER ORDERED that the plaintiffs' request to file under seal Exhibit 6 to Docket No. 224 is granted.

Dated: New York, New York
August 20, 2020



DENISE COTE
United States District Judge